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ABSTRACT

The final version of the School to Work Opportunities Act was passed only after an extended battle over how to protect individuals' private right of action to enforce the act. Although it still contains nonentitlement language, the final act also includes new language clarifying Congress' intent that the provision not preclude enforcement of the act. The final act mandates the following: opportunities for all students to complete a career major; equal access to the full range of program components and related activities; career awareness, exploration, and counseling beginning no later than grade 7 and including options that may not be traditional for students' gender, race, or ethnicity; and delegation to local partnerships of the responsibility for linking participants with other community services necessary to ensure a successful transition. The final version of the bill contains a broad definition of work-based learning and provisions stipulating that all states receive planning grants and compete for implementation grants. Two potential dangers in the act are its broad waiver authority and self-waiver provision. The act also provides advocates and educators with important advocacy opportunities. (MN)

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Vocational Opportunity for Community and Educational Development
REPORT

This column, which describes developments in vocational education advocacy and reports on the work of the Center for Law and Education's VOCED Project, is a regular feature of NEWS-NOTES. For more information on any of the topics discussed below, contact the VOCED Project at the Center's Washington, D.C. office. Major funding for the VOCED Project is provided by the DeWitt Wallace-Reader's Digest Fund, the Joyce Foundation, and the Charles Stewart Mott Foundation.

New School-to-Work Act Mandates "All Aspects of the Industry" Approach

The School-to-Work Opportunities Act, signed into law by President Clinton on May 4, 1994, provides funding to create systems that provide all students with the opportunity to participate in school-to-work programs. The House and the Senate passed the conference bill on April 20 and 21, 1994 respectively, after an extended battle over how to protect individuals' private right of action under 42 U.S.C. §1983 to enforce the Act.

Right to Enforce the Act

The conflict over this issue arose when the House Education and Labor Committee inserted language into the bill stating that "Nothing in this Act shall be construed to provide any individual with an entitlement to the services authorized by this Act." The Senate Labor and Human Resources Committee similarly added "Nothing is this Act shall be construed to establish a right for any person to bring an action to obtain services under this Act."

Most Congressional staff saw the provisions as serving only to prevent the minimally-funded Act from creating the type of entitlement where, once an individual meets the eligibility criteria set forth in the Act, that individual thereby has a right to receive services or benefits (as in IDEA and Medicare). Advocates were concerned about the clauses' implications for §1983 litigation, and in particular about the likelihood that a court might interpret the clauses as evidence that either no rights were created by the Act or that Congress intended to foreclose private enforcement of any rights.

The final Act includes the House non-entitlement language, but adds new language clarifying Congress' intent that that provision not preclude enforcement of the Act. A new section entitled "Impact on other laws" states in part, "Nothing in this Act shall be construed to ... modify or affect any right to enforcement of this Act that may exist under other Federal laws, except as expressly provided by this Act." The conference committee report elaborates: "The conferees added new language to make clear that nothing in this Act is intended to expand, diminish, modify or affect any rights to enforcement that an individual may have under other federal laws, such as 42 U.S.C. §1983, if any, with respect to the lawful operation of school-to-work programs and state and local obligations under the Act, except as expressly provided. The conferees expect state and local entities to establish and maintain programs in a manner consistent with the requirements of this Act and to carry out the obligations of this Act, including assurances and actions described in state and local applications and plans."

Senator Metzenbaum (D-OH) championed the need for a clear private right of action. Through an exchange with Senator Simon on the Senate floor, he clarified that the non-entitlement provision was not meant to preclude §1983 suits, but only to distinguish the School-to-Work Act from federal entitlement programs where, once an individual meets the eligibility criteria set forth in the Act, that individual thereby has a right to receive services or benefits — such as IDEA, Medicare and Pell Grants.

Mandates Worth Enforcing

In contrast to the original bill, the final Act includes mandates that advocates may well want to enforce.

Programs under the Act must provide all students with opportunities to complete a career major — a coherent sequence of courses or field of study that meets certain criteria. In a major step forward for federal vocational education policy, the Act requires that these career majors provide students, to the extent practicable, with strong experience in and understanding of all aspects of the industry students are preparing to enter (including planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety issues, and environmen-

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issues).

Since 1990, the Perkins Vocational and Applied Technology Act has mandated that local and state evaluation and planning focus on "all aspects." This is the first time, though, that federal law has made the approach, which is a centerpiece of CLE's VOCED Project agenda, a flat-out requirement.

A career major typically includes at least 2 years of secondary and 1 or 2 years of postsecondary education. It must:

- integrate academic and occupational education, integrate school-based and work-based learning, and link secondary and postsecondary education,
- prepare a student for a first job and for employment in broad occupational clusters or industry sectors, and
- result in a) a high school diploma, a GED, or an alternative diploma for students with disabilities, where appropriate, b) a certificate or diploma recognizing the postsecondary education (if appropriate), and c) a skill certificate.

Programmatic requirements guard against school-to-work programs serving as dumping grounds, on the one hand, or elite-only training opportunities, on the other. The school-based learning component must be designed to meet the same academic standards set by the State for all students, to prepare students for postsecondary education, and to award skills certificates. The House-Senate Conference report states: "Students who complete a school-to-work program at the secondary school level ... should also be prepared to enter a postsecondary education or training program including a traditional 4-year college program, without additional academic preparation." Measurable outcomes are emphasized at every level of planning.

At the same time, programs must provide all students with equal access to the full range of program components and related activities. "All students" is defined as meaning "both male and female students from a broad range of backgrounds and circumstances, including disadvantaged students, students with diverse racial, ethnic, or cultural backgrounds, American Indians, Alaska Natives, Native Hawaiians, students with disabilities, students with limited-English proficiency, migrant children, school dropouts, and academically talented students."

The Act also requires career awareness, exploration, and counseling beginning no later than 7th grade and including options that may not be traditional for students' gender, race, or ethnicity. Regularly scheduled evaluations must identify academic strengths and weaknesses, academic progress, goals, and the need for additional learning opportunities to master core academic and vocational skills.

Local partnerships have responsibility for linking participants with other community services that may be necessary to assure a successful transition from school to work, assisting completers with job or education placement, and collecting and analyzing outcome information. Other local and state mandates address the need to give students flexibility to develop new career goals over time, to change career majors, and to transfer between education and training programs.

Broad Definition of Work-based Learning

The original bill was based on President Clinton's campaign promises of a national youth apprenticeship system, in which students would be paid to spend part of their time learning in a private workplace. As student advocates and others pointed to the severe lack of jobs and the low-skill nature of those generally available to youth, the conception of work-based learning broadened dramatically.

The legislation recognizes school-sponsored enterprises and community development projects as valid work-based learning opportunities. It further facilitates these alternatives by encouraging, rather than mandating, the experiences to be paid. According to the conference report, any wages earned in the program should not be counted in determining need, eligibility, or amount of public assistance benefits.

Grants and Assistance

States play leading roles in the Act. All states receive *planning grants,* which are used to design statewide systems and to write state plans. These plans must describe how the state will meet various quality, equity, and public participation mandates.

The larger state grants — *implementation grants* — are awarded on a competitive basis and are used to put the plans into action. The expectation is that at the end of three to five years, all states will have received implementation grants. Most of the implementation grant monies flow through to the local level. The portion retained at the state level is used for outreach, training, coordination, and design of model curricula and programs.

All of the funds going to the local level go to local *partnerships* — entities responsible for programs and consisting of employers, public secondary and postsecondary educational institutions or agencies, educators, labor, and students. Partnerships may also include community-based organizations, parent organizations, and others. A note of caution: proprietary schools may be included in partnerships.

Grants to partnerships come mostly from the states, in the form of *state subgrants to local partnerships* (out of the state implementation grant funds). Two types of local grants are available directly from the federal government (by RFP): *federal partnership grants*

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for those in states which have not received state implementation grants, and *grants to local partnerships in high poverty areas.*

Federal responsibilities also include conducting research and development, establishing a program of experimental and demonstration projects, providing technical assistance, establishing a system of performance measures for assessing state and local programs, and conducting a national evaluation of funded programs. Federal responsibilities are carried out by the U.S. Secretaries of Education and of Labor.

Funding available under the Act is very limited, with appropriations authorized for only $300,000,000 for FY 1995. The Act is designed to leverage other federal, state, and local funds toward the development of these systems.

Programmatic requirements guard against school-to-work programs serving as dumping grounds, on the one hand, or elite-only training opportunities, on the other.

Danger: Waivers Ahead

The Act includes broad waiver authority, but with important limitations and public involvement conditions. A state with an approved plan may request a waiver of statutory or regulatory provisions from the appropriate Secretary (Education or Labor). If a local partnership wants a waiver, it must to ask the state to submit an application for it.

Laws subject to waiver include Chapter 1 and Chapter 2 (Part A) of the Elementary and Secondary Education Act, the Eisenhower Math and Science Education Act, the Emergency Immigrant Education Act, the Drug-Free Schools and Communities Act, the Perkins Vocational and Applied Technology Education Act, and the Job Training Partnership Act.

The Secretary may only waive a requirement if, and to the extent that, the requirement impedes the ability of the state or partnership to carry out the purposes of the Act. Moreover, the state must document the necessity for the waiver, including expected positive outcomes, why those outcomes can't be achieved without the waiver, and how the state will monitor implementation.

Perhaps most importantly, the Act includes a long list of provisions which the Secretaries may not waive. These include requirements relating to the basic purposes or goals of such provision, civil rights, individual eligibility for participation, maintenance of effort, and, for education laws, student and parental participation and involvement and comparability. The breadth of exceptions should significantly reduce the threat of waivers.

The state must provide notice and an opportunity to comment not only to partnerships, but also, "to the extent feasible," to students, parents, advocacy and civil rights groups, and labor and business organizations. Advocates would be well advised to write to their state's planners requesting notice of any waiver applications.

Even Greater Danger: Self-waivers

The Act allows high poverty schools to combine federal funds from the same laws that are subject to waiver — with the notable exception of Chapter 1 — and use them for schoolwide school-to-work programs. The avowed purpose of this provision is to allow schools with an overwhelming majority of eligible students to implement a schoolwide program, without having to individually certify students for participation. The provision allows eligible schools to ignore requirements for individual eligibility for participation, as well as anything that the Secretaries could waive.

In contrast to waivers, though, there is no federal approval process. The proposed combination is simply included in the local program application to the state. The local partnership must, however, disseminate information on the proposed combination to parents, students, educators, advocacy and civil rights organizations, and the public "to the extent feasible."

The Act includes similar permission for states with approved school-to-work plans to combine state administrative funds from the Perkins Act and JTPA. However, this section is far less damaging. States must give documentation and reasoning and obtain permission from the Secretaries, as with waivers. Also, states must still carry out leadership activities mandated by the Perkins Act.

Advocacy Opportunities

Advocates and educators will have the greatest chance of impact if they get involved in state and local planning early on. States have broad public involvement responsibilities beyond the notice and comment processes described above. In order to receive funding, they must describe how they have obtained and will continue to obtain active and continued participation of students, parents, community-based organizations, teachers, and others.

On the local level, the partnership operating programs must include local educators, labor representatives, and students, and they may include community- based organizations. **LJ**